

KEATING, MUETHING & KLEKAMP
ATTORNEYS AT LAW

18TH FLOOR PROVIDENT TOWER
ONE EAST FOURTH STREET

CINCINNATI, OHIO 45202

(513) 579-6400

JOHN L. MUETHING
DONALD P. KLEKAMP *
TIMOTHY A. GARRY
GARY P. KREIDER
DON R. GARDNER
MICHAEL J. BURKE *
LOUIS F. GILLIGAN
JOSEPH P. ROUSE
RICHARD D. SIEGEL
DENNIS M. DOYLE
LANNY R. HOLBROOK *
JOSEPH L. TRAUTH, JR.

JAMES R. WHITAKER
J. DAVID ROSENBERG *
W. BRUCE LUNSFORD **
RICHARD L. CREIGHTON, JR.
PAUL V. MUETHING
JEROME C. RANDOLPH
JEFFREY K. HEINICHEN
WILLIAM A. POSEY
WILLIAM J. KEATING, JR.

WILLIAM J. KEATING
COUNSEL

* ALSO ADMITTED TO
PRACTICE IN KENTUCKY
** LEAVE OF ABSENCE

April 22, 1980

RECORDATION NO. 11632-B Filed 1425

APR 24 1980 -2 10 PM

INTERSTATE COMMERCE COMMISSION

Direct Dial: 579-6413

No. 0-115A056

Date APR 24 1980

Fee \$ 10.00

ICC Washington, D. C.

Secretary of the
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir:

Enclosed for recordation pursuant to 49 U.S.C. 11303, please find an original and nine counterparts of Amendment No. 1 to Management Agreement Between Railway Freight Car Services, Inc., Agent and Columbus & Greenville Railway Company, Manager.

The names and addresses of the parties to the Amendment No. 1 to Management Agreement are as follows:

1. Railway Freight Car Services, Inc.
North Shore Towers
269-10C Grand Central Parkway
Floral Park, New York 11005
Attention: Harvey Polly
2. Columbus & Greenville Railway Company
P. O. Box 6000
Columbus, Mississippi 39701
Attention: Jim Thompson, Treasurer

The enclosed Amendment No. 1 to Management Agreement amends the Management Agreement between Railway Freight Car Services, Inc. and Columbus & Greenville Railway Company dated as of March 25, 1980 and filed with the Interstate Commerce Commission on April 8, 1980 at 10:25 a.m., Recordation No. 11632-A. The equipment covered by the Management Agreement and Amendment No. 1 to Management Agreement consists of 50 100-ton 52'6" gondola cars, having identifying marks of CAGY 13,000 through 13,049.

RECEIVED
APR 24 2 01 PM '80
I.C.C.
FEE OPERATION BR.

Secretary of the Interstate
Commerce Commission
April 22, 1980
Page Two

Please return nine stamped copies of the enclosed Amendment
No. 1 to Management Agreement to:

Keating, Muething & Klekamp
18th Floor Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202

Attention: Richard D. Siegel

Very truly yours,

KEATING, MUETHING & KLEKAMP

BY: Richard D. Siegel

dbs

Enclosure

Interstate Commerce Commission
Washington, D.C. 20423

5/5/80

OFFICE OF THE SECRETARY

**Keating, Muething & Klekamp
18th Floor Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202**

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/24/80 at 2:10pm and assigned re-recording number(s). **11652-B**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 11632-B Filed 1425

APR 24 1980 -2 10 PM

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 1

TO

MANAGEMENT AGREEMENT

BETWEEN

RAILWAY FREIGHT CAR SERVICES, INC.
AS AGENT

AND

COLUMBUS & GREENVILLE RAILWAY COMPANY
AS MANAGER

DATED AS OF APRIL 1, 1980

Filed and recorded with the Interstate Commerce
Commission pursuant to Section 11303 of Title 49,
United States Code on April ___, 1980, at
_____, Recordation No.
_____.

AMENDMENT NO. 1 to MANAGEMENT AGREEMENT, dated as of April 1, 1980, between RAILWAY FREIGHT CAR SERVICES, INC., a New York corporation, as agent for the owners listed in Schedule I to that certain Agency and Pooling Agreement dated as of March 25, 1980 (hereinafter called "Owner") and COLUMBUS & GREENVILLE RAILWAY COMPANY, a Mississippi corporation (hereinafter called "Manager").

WHEREAS, Owner and Manager have entered into a Management Agreement dated as of March 25, 1980 (hereinafter called "Management Agreement"), covering 50 - 52'6" 100 ton gondolas; and

WHEREAS, Owner and Manager desire to amend the Management Agreement, subject to the terms and conditions hereof;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable considerations, receipt of which is hereby acknowledged, Owner and Manager do hereby agree as follows:

1. Paragraph 6.A.3. (located on Page 5) of the Management Agreement is hereby amended and shall hereafter read as follows:

"3. In the event irreparable damage or destruction of a Unit has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules - Freight and the appropriate amount due as a result thereof is received by Owner, said irreparably damaged or destroyed Unit will be removed from this Agreement as of the date that payment of car hire revenues ceased; provided, however, such Unit will be removed from this Agreement for purposes of computing the management fee (including any adjustments) hereunder only for one half (1/2) of the period commencing with the date that payment of car hire revenues cease until all repairs necessary to rebuild such Unit are completed, and the Manager shall undertake to rebuild such Unit as soon as practicable, at Owner's expense, unless Owner determines not to rebuild such Unit."

2. The second paragraph of Section 12, Default (located on page 14), of the Management Agreement is hereby amended and shall hereafter read as follows:

"The remedies in this Management Agreement provided in favor of Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Manager hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law."

3. The fourth paragraph of Section 12, Default, of the Management Agreement is hereby amended and shall hereafter read as follows:

"Nonpayment by Owner of any sum required herein to be paid or reimbursed by Owner to Manager not later than thirty (30) days after such payment is due shall be a default (hereinafter called an "Owner Default") by Owner hereunder. Upon the occurrence of such an Owner Default, Manager shall have such other rights as may be available to it at law or in equity, including without limitation any and all existing or future claims to any offset against the Remittances or any other payments due Owner hereunder. In the event Owner disputes the occurrence of an Owner Default claimed by the Manager, such dispute or disagreement may be submitted, upon the request of the parties, to a panel of three (3) independent arbitrators, one of whom shall be selected by Manager, one of whom shall be selected by Owner, and the third to be selected by such designated arbitrators. The determination of a majority of such arbitrators as to such dispute or disagreement shall be binding upon both parties hereto."

4. The second paragraph of Section 14, Assignment, Merger of Manager, is hereby amended and shall hereafter read as follows:

"So long as Manager shall not be in default under this Management Agreement, Manager shall be entitled to manage the Equipment and to permit the use of the Equipment upon railroads in the usual interline interchange of railway traffic, but only upon and subject to all the terms and conditions of this Management Agreement; provided, however, that Manager shall exercise its control, if any, under applicable law, or rules, regulations or orders of the ICC, DOT, or AAR, or any other governing organization or agency, to prevent the assignment or use of any Unit to service involving the regular operations and maintenance thereof outside the United States, or any Unit to be outside the United States. No assignment, lease, or interchange entered into by Manager hereunder shall relieve Manager of any liability or obligation hereunder."

5. The second paragraph of Section 15, Assignment by Owner, of the Management Agreement is hereby amended and shall hereafter read as follows:

"Owner may grant at any time a security interest or other lien on any and all of the Equipment, this

Management Agreement and sums due under this Management Agreement to a financial institution or other assignee (hereinafter "Secured Party"). In such event (a) upon request by Owner or Secured Party, Manager will (i) cause all amounts payable to Manager from Other Railroads or from any other party for the use of or relating to the Equipment, including, without limitation, mileage charges, straight car hire payments, penalties and incentive car hire payments, to the fullest extent permitted by law, to be paid directly to Secured Party or as Secured Party shall direct, (ii) hold in trust any such amounts received by Manager and forthwith pay the same to Secured Party, together with an accounting therefor, and (iii) make payment of all Remittances and other payments due or to become due under or arising under this Management Agreement directly to the Secured Party or as the Secured Party may direct; (b) Manager will not, after obtaining knowledge of any such assignment, consent to any modification of this Management Agreement without the prior written consent of Secured Party; and (c) Manager will provide to Owner and Secured Party such certificates, statements, or other information as Owner may from time to time reasonably request, including without limitation a "no-default certificate".

6. The second paragraph of Section 18, Owner's Warranties; Indemnification, of the Management Agreement shall be deleted in its entirety from the Management Agreement.

7. The first sentence of the first paragraph of Section 26, Additional Equipment, of the Management Agreement is hereby amended and shall hereafter read as follows:

"Manager shall not purchase or lease (for more than ten years) additional Gondola railroad cars, excluding 65 foot Gondola railroad cars or similar purpose cars ("Additional Equipment"), so long as the utilization of the Equipment is less than Seventy-Seven Percent (77%) for a period of twelve (12) consecutive months, or such increased percentage as adjusted pursuant to Section 6.A.1. hereof for the payment of management fees."

8. Owner represents and warrants that it has not transferred, assigned, or conveyed any of its rights under the Management Agreement as of the date hereof. Except as expressly amended hereby, the Management Agreement is hereby affirmed and ratified by the respective parties thereto and shall remain in full force and effect in all other respects and references to such instruments shall hereinafter mean such instrument as amended hereby.

9. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Ohio; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

ATTEST:

Morton J. Hall

ATTEST:

J. Thompson

RAILWAY FREIGHT CAR SERVICES, INC.,
Agent

BY:

COLUMBUS & GREENVILLE RAILWAY
COMPANY, Manager

BY:

H.C. Bitner

STATE OF Mississippi)
COUNTY OF Lauderdale) SS.

BE IT REMEMBERED, that on the 11 day of April, 1980, before me, the subscriber, a Notary Public in and for said County and State, personally appeared H.C. Bitner, of COLUMBUS & GREENVILLE RAILWAY COMPANY, the corporation whose name is subscribed to and which executed the foregoing instrument and for himself and as such officer, and for and on behalf of said corporation, acknowledged that he did execute said instrument on behalf of said corporation, and that the signing and execution of said instrument is his free and voluntary act and deed as such officer, and the free and voluntary act and deed of said corporation for the uses and purposes mentioned in said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year aforesaid.

(S E A L)

Notary Public
NOTARY PUBLIC

My Commission expires:

11-17-83

STATE OF NEW YORK)
 : SS.
COUNTY OF NEW YORK)

BE IT REMEMBERED, that on the 17th day of April, 1980, before me, the subscriber, a Notary Public in and for said County and State, personally appeared Harvey Polly, of RAILWAY FREIGHT CAR SERVICES, INC., the corporation whose name is subscribed to and which executed the foregoing instrument, and for himself and as such officer, and for and on behalf of said corporation, acknowledged that he did execute said instrument on behalf of said corporation, and that the signing and execution of said instrument is his free and voluntary act and deed, his free act and deed as such officer, and the free and voluntary act and deed of said corporation for the uses and purposes mentioned in said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year aforesaid.

(S E A L)

Rachel Landisman
NOTARY PUBLIC

My Commission expires:

RACHEL LANDISMAN, Notary Public
State of New York, No. 41-4661529
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1981